

NATURAL RESOURCES BOARD

MINUTES

An executive session was held on Tuesday, August 10, 2004 at 12:30 p.m. The Natural Resources Board met in closed session under the authority of s.19.85 (1)(g) Wisconsin Statutes, for the purpose of discussing current litigation matters.

Mr. Ela MOVED, seconded by Mr. Behnke to go into executive session to discuss litigation matters. The motion carried unanimously by all members present.

Chairman O'Brien requested a roll call vote to go into Executive Session.

Yes

Gerald O'Brien

Jonathan Ela

Herb Behnke

Christine Thomas

Duke Welter

Steve Willett

Absent:

Dan Poulson

On August 11, Chairman O'Brien indicated no action was taken at the executive session.

The regular meeting of the Natural Resources Board was held on Wednesday August 11, 2004 at The Best Western Midway Hotel, 1835 Rose Street, La Crosse, Wisconsin. The meeting was called to order at 8:30 a.m. All August Board Agenda business was conducted by the Full Board. The meeting adjourned at 4:43 p.m.

PRESENT:

Gerald M. O'Brien, Chairman

Dan Poulson, Vice-Chairman

Jonathan Ela, Secretary

Herb Behnke

Christine Thomas

Duke Welter

Steve Willett

ORDER OF BUSINESS

1. Minutes to be approved.

1.A. Organization and Procedure Minutes of June 22, 2004.

Mr. Welter MOVED, seconded by Mr. Poulson approval of the Organization and Procedure Minutes of June 22, 2004, as presented. The motion carried unanimously by all members.

1.B. Full Board Minutes of June 23, 2004.

Mr. Poulson MOVED, seconded by Mr. Welter approval of the Full Board Minutes of June 2004, as presented. The motion carried unanimously by all members.

1.C. Agenda for August 11, 2004.

Secretary Hassett asked that item 3.A.11 be moved after 3.A.5.

Mr. Welter MOVED, seconded by Mr. Ela approval of the Agenda of August 11, 2004, as amended. The motion carried unanimously by all.

2. Ratification of acts of the Department Secretary.

2.A. Real estate transactions.

Mr. Behnke MOVED, seconded by Mr. Poulson approval of the real estate transactions as presented. The motion carried unanimously by all members.

3. Operating Committees.

3.A. Air, Waste and Water/Enforcement Committee.

3.A.1 Minutes. There were no Committee minutes for June 2004 since all agenda items were taken up during the Full Board Meeting.

~~3.A.2. Adoption of Board Order AM-06-04, changes to ch. NR 405, 408 and 484, WI Adm. Code to incorporate required federal rules changes and to improve new source review permitting process in the state.~~

DELETED FROM AGENDA

3.A.3. Adoption of Board Order SS-09-04, code revisions to chapter NR 219, pertaining to analytical testing requirements of permitted discharge.

David Webb, Section Chief, Environmental Science Services, Integrated Science Services Bureau, stated that Chapter NR 219 WI Adm. Code establishes analytical test procedures required from the analyses of wastewater samples for permit compliance. The purpose of amending chapter NR 219 is to adopt revisions to the federal regulations. Other EPA methods, which have been revised, will have their situations updated. In addition, methods for the analysis of PCBs in sludge will be included. The proposed rule changes will affect laboratories certified under chapter NR 149 which perform wastewater analyses for compliance samples.

Mr. Willett MOVED, seconded by Ms. Thomas approval of adoption of Board Order SS-09-04, code revisions to chapter NR 219, pertaining to analytical testing requirements of permitted discharge as presented. The motion carried unanimously by all members.

3.A.4. Adoption of NR 114 proposed rule revisions for operator certification, continuing education, and fee requirement for septage haulers.

Greg Kester, Wastewater Engineer, Bureau of Wastewater Management stated NR 114 in three separate subchapters, set standards, fees and other requirements to certify Wastewater, septage, and water treatment operators. A provision to allow lifetime certification for septage operators was adopted in 1995, when NR 114 was last revised. The lifetime certification would be available after an operator had nine consecutive years of operation with no violations or citations, and maintained operator certification in good standing. This means that beginning in October 2004 the first lifetime certification would be available. Once a lifetime certification is issued, there would be no further requirement for the individual to participate in continuing education or pay any additional fees. It is now recognized that continuing education is a cornerstone of the industry and without any such requirements, attendance at training sessions is anticipated to decline sharply. There would be no assurance that critical regulatory updates or implementation sessions would be attended. The Department also believes that eliminating any revenue source in the current fiscal landscape does not constitute sound policy. The proposed revisions remove the lifetime certification; increase fees; commit the Department to use fees for the purpose of implementing the septage program; restructure certification grades; convert existing operators to new grades; establish minimum experience and time requirements; and establish mandatory class and examination requirements in order to become designated as an operator-in-charge in the future. Nine public hearings were held and not one verbal or written comment received objected to the elimination of the lifetime certification.

Mr. O'Brien asked what the fee increases are.

Mr. Kester stated that it varies depending on what it is. For the first time taking the exam goes from \$25 to \$100. Late fees go from \$25 to \$100. Currently, 60% of renewals are late. The certificate of renewal \$45 to \$65. The operator in training registration goes from \$10 to \$25.

Mr. Behnke MOVED, seconded by Mr. Poulson approval of the adoption of NR 114 proposed rule revisions for operator certification, continuing education, and fee requirement for septage haulers. The motion carried unanimously by all members.

3.A.5. Adoption of revisions to Board Order DG-22-01 pertaining to NR 815.06 regulations of injection wells.

Lee Boushon, Section Chief, Drinking Water Systems, Bureau of Drinking Water and Ground Water, stated Board order DG-22-01 was approved by the NRB in January 2002. Following a request from the Wisconsin Legislature, the Department spent two years working with the Wisconsin Department of Commerce and the U.S. Environmental Protection Agency (EPA) to consider changes that addressed

legislators' concerns but still ensured that the proposed state regulations met the federal requirement that state injection well regulations be at least as stringent as existing federal requirements. The modified Board Order was approved by the Board in April 2004.

Mr. Ela MOVED, seconded by Mr. Willett for approval of Adoption of revisions to Board Order DG-22-01 pertaining to NR 815.06 regulations of injection wells. The motion carried unanimously by all members.

- 3.A.6. Request authorization for public hearing on proposed administrative rule changes to NR 410, pertaining to fees for asbestos program.

Lloyd Eagan, Director, Air Management Bureau stated that revisions to NR 410.05 specify increases in asbestos inspection fees. There have been no increases to permit exemption fees. The rule order creates the ability to charge the costs of laboratory analysis for samples taken at non-residential demolition and renovation projects. All of the above fee increases and the new laboratory fee were part of Wisconsin Act 33 and have been incorporated in s. 285.69(3), stats.

Mr. Willett MOVED, seconded by Mr. Poulson approval of request authorization for public hearing on proposed administrative rule changes to NR 410, pertaining to fees for asbestos program.

Mr. Ela asked about the statement on the memorandum that says "The regulated community continues to call for a greater presence in the field in order to maintain a high level of service without competing with those unwilling to comply with the state asbestos regulations." Are there people who are simply violating the law? How are we trying to track down these violators?

Ms. Eagan stated yes. There is a very strong support from the regulated community because they feel there are some fly by night competitors that are undercutting their prices by not properly removing asbestos. They expose workers to asbestos and all sorts of problems that can ensue later on because of that. We are hoping to add some Limited Term Employees (LTEs) to help with that and we can contract with local building inspectors.

The motion carried unanimously.

- 3.A.7. Request authorization of public hearing for proposed revisions to NR 106, NR 149 and NR 219 to incorporate updated toxicity testing methods.

Kari Fleming, Environmental Toxicologist, Bureau of Watershed Management stated that monitoring for whole effluent toxicity (WET) is required in WPDES permits in order to determine the potential for impairment of fish and aquatic life from wastewater discharges. Rule changes to NR 106, 149, and 219, are needed to update Wisconsin specific WET testing methods.

Mr. Willett MOVED, seconded by Mr. Ela approval of request authorization of public hearing for proposed revisions to NR 106, NR 149 and NR 219 to incorporate updated toxicity testing methods. The motion carried unanimously.

- 3.A.8. Request authorization of public hearing for proposed changes to NR 406, NR 407, and NR 410 regarding the relationship between federal and state permit process.

Lloyd Eagan stated that on December 31, 2002, the USEPA promulgated Federal rules which significantly changes the federal new source review (NSR) program for major emission sources located in both attainment and non-attainment areas. In response to the promulgation of these rules, the Department has met with stakeholders to develop a proposed version of these rules which it believes will work for the state by reducing administrative burden on both the Department and regulated entities while maintaining environmental standards and the public's ability to participate in the review process. The Department has proposed rules adopting a variation on the federal rule changes within chapters NR 405 and 408 under Board order AM -06-04, which is on the Board's agenda for adoption.

Mr. Willett MOVED, seconded by Mr. Poulson approval of request authorization of public hearing for proposed changes to NR 406, NR 407, and NR 410 regarding the relationship between federal and state permit process. The motion carried unanimously.

3.A.9. Request authorization of public hearing for proposed changes to NR 406, NR 407, and NR 410 regarding general and registration permits.

Lloyd Eagan stated 2003 Wisconsin Act 118 provided the Department with the authority to develop regulations necessary to implement general and registration air permit programs. General permits and registration permits are intended to provide industry and Department with a streamlined approach to permitting construction and operation of low emitting sources or source categories in which regulated facilities are very similar in nature. Sources that choose to take advantage of the general or registration permits would complete a simplified permit application form to apply for an air permit that has been previously prepared for the source category the source is within. General and registration permits would be previously completed by the department for low emitting sources or categories of similar sources using permit language that is standard for the sources to be regulated by the permits.

Mr. O'Brien asked what is an example of a source that you can now regulate that you would not be able to regulate under the other rule.

Ms. Eagan stated for example, a dry cleaner that has low levels of emissions and didn't fit under the general permit category.

Mr. Ela asked about the registration and general permits thresholds. How are those numbers arrived at?

Ms. Eagan stated it is a percentage of a significance level that's determined by the federal rule.

Mr. Ela asked if staff can give a meaningful review in 15 days.

Ms. Eagan stated it is a simple permit application.

Mr. Ela MOVED, seconded by Mr. Willett approval of Request authorization of public hearing for proposed changes to NR 406, NR 407, and NR 410 regarding general and registration permits. The motion carried unanimously.

3.A.10. INFORMATION ITEM – Proposed revised emergency public waters rules NR 1, NR 310, NR 320, NR 328, NR 329, NR 343 and NR 345.

Todd Ambs, Administrator, Water Division stated that 2003 Wisconsin Act 118 created a new three-tier review system for physical modifications to, and structures in, lakes and streams. Such projects may be exempt, eligible for a general permit, or require individual permit review with public notice. In response, the Board adopted emergency rules setting standards for exemptions, including designation of waters where exemptions are not available, establishing specifications for general permit eligibility, and procedures for individual permit review. Twelve chapters of emergency rules went into effect in two parts on April 19 and May 19. On June 24, 2004, the legislature's Joint Committee for Review of Administrative Rules (JCRAR) adopted a motion under which NR 1, the Natural Resources Board Policy and Waters Designation, would be suspended on July 24, 2004 in the absence of an agreed-upon alternative. Department staff worked with legislators and representatives of builders, realtors, and conservation groups to craft an alternative proposal. NR 1 is proposed to be modified to remove the musky, walleye, sturgeon and perennial trout tributaries. The pier rule was suspended even though the emergency rule was more forgiving than the statute. No enforcement action or citations were taken for any family piers. We will not be proposing any new emergency rules for piers this season; instead we will propose a permanent rule for the next summer season. We are meeting the legislative intent. We need to remember the resource.

Mr. Willett asked if there is more work to be done on the permanent rules or do the emergency rules reflect the permanent rule.

Mr. Ambs stated there is more work to be done. There are public hearings to be held before final adoption.

Mike Staggs, Director, Bureau of Fisheries and Habitat stated NR 328 is closer to being completed than some of the other rules.

Steve Willett stated that NR 328 is very closely tied to NR 115 and he would like to see both of those rules to be advanced so we can resolve those issues together and fairly quickly.

Mr. Staggs distributed a performance report of the emergency rules for projects in public waters. The rules have streamlined the permit process. 40% qualify for general permits, 14-day average decision time. 10% exempt – 13-days average decision time. The other 50% require individual permits. Compliance-exemptions: 21 inspections, 100% in compliance, 38% not completed. General permits: 20 inspections, 73% in compliance, 45% not complete. Individual permits: 13 inspections, 78% in compliance, 30% not completed.

Mr. Welter asked about exemption determinations. Are those exemption determinations only good for 2004? If they don't start the project this year, will their projects still be under the emergency rule.

Mr. Staggs stated that in the permanent rules we will have to address that issue. If the law changes we will make a good faith effort to contact them. We are implementing all the changes on our website, which has a searchable waters list and an updated permit data system. We are working with the act 118 implementation team, regional staff, waterway/wetland management team. We are conducting staff training and providing information to the public.

Mr. Welter asked if the determination of completeness dates from the time that you consider the processing time to begin or is it from the time that the application is received.

Mr. Staggs stated that is from the time that a completed application is received. The clock starts when an application is received. It stops if there is an incompleteness. It starts again when it's completed.

Mr. Ela stated the Board requested the performance evaluation report because of the legislative interest to have an evaluation process before adoption of permanent rules.

Mr. Staggs distributed the new draft emergency rules that will be voted on Monday, August 16, 2004 during a conference call.

Mr. Willett asked what happens now. Does this give the Department an extension because it is a new set of emergency rules?

Mr. Staggs stated that we haven't done this before, so that's a good question. I think the clock will start over.

Mr. Willett stated he hopes the time does start over.

Mr. Ambrose stated we will have an answer by Monday.

Mr. Staggs explained NR 1 - Water designations. The policy statement remains suspended by Joint Committee on Review of Administrative Rules (JCRAR) because there were too many waters that might qualify. The description of Area of Special Natural Resources Interest was deleted. The list of Areas of Special Resources Interest was shortened in favor of additional specifications for individual regulated activities.

Mr. O'Brien asked if the Board is approving a specific list of waters.

Mr. Staggs stated it is not a specific list, but a list implied by definitions of certain classes of water. The list cannot be changed more than once in a two-year period.

Mr. Welter asked for a summary of the difference in the level of protection if we go with the new list.

Mr. Staggs stated that we discussed the impact of the exemptions. We went back into each of the individual standards and tried to put something back in that would mitigate those fish habitat issues. The level of protection is about the same.

Mr. Willett asked about wild rice waters.

Mr. Staggs stated they are left in because they are sensitive waters, but also because there is a federal court approved stipulation that any activities must be discussed with the tribes.

Additional changes to NR 1 clarify that endangered, threatened, and special concern species, and unique natural communities and public rights features affect only those portions of waters where the species or features are found. It requires report on listing special concern species to Natural Resources Committee and (JCRAR). The list of priority navigable waters is unchanged.

NR 310 - there was a concern of unclear effect of public rights features. The new rule clarifies that applicability is for location of public rights features, not whether an activity has an effect on public rights features. Obliges department to identify public rights features in notifying general permit applicant of ineligibility if public rights feature is a general permit location standard.

NR 320 - bridges and culverts - general permit required in perennial tributaries to trout streams, waiver potentially available for general permit spawning windows through fisheries biologist, endangered and threatened species impact determination process.

NR328 - shore erosion control structures - repair and replacement exempt if previously permitted or in moderate to high energy settings, re-vegetation required for replacement riprap, overall height limits corresponding to storm wave heights, general permit for riprap in low energy as seawall replacement, endangered and threatened species impact determination process.

NR329 - miscellaneous structures - general permit required for intake-outfall in perennial tributaries to trout streams, overall size limit on intake or outfall structure, waiver potentially available for general permit spawning window through fisheries biologist, endangered and threatened species impact determination process.

NR 343 for storm water ponds, flexibility allowed to determine project impact on public rights features.

NR 345 dredging – general permit required in perennial tributaries to trout streams, waiver potentially available for general permit spawning windows through fisheries biologist, endangered and threatened species impact determination process.

Mr. Ela asked what the standard is for dredging.

Mr. Staggs stated it is 3000 cubic yards.

Mr. Welter asked about the culvert rule. Do they apply only to culverts under 24 inches in diameter or previously permitted?

Mr. Staggs stated you can get an exemption for either of those.

Mr. Ela asked about the preamble of NR 1 and the reasoning for removing it.

Mr. Staggs stated that during the negotiations of NR 1 the preamble had a statement of intent of the chapter, which is helpful for interpretation. For purposes of the emergency rule, we said we would not bring it back to the Board at this time, but for the permanent rule there will be a preamble with a statement of intent.

Mr. Ela asked for a summary of the public hearings that have been held.

Mr. Staggs stated that not all of the public hearings have been held. Over the past weeks there have been hearings on NR 1, NR 310, NR 300, not some of the more controversial ones. As of August 10th, we have had 481 comments, 87 said that the rules are too stringent, 336 stated the rules are not stringent enough, 54 have been in favor of the original emergency rules as a good template for the permanent rules.

Public Participation

Jay Verhulst, Arbor Vitae, Vilas County Board of Supervisors stated that the purpose of Act 118 was to streamline this process. If we are required to have a zoning administrator, let the counties do their jobs. The truth is every single rule you have before you now that deals with the shores is already covered in county shore line protections. We can streamline this process get out of the land permitting process completely. The grading permit that you approved is less restrictive than what we have currently had in force in our county. He asked for the Board to vote down rule.

George Meyer, Madison, Wisconsin Wildlife Federation stated the WWF supports the adoption of this emergency rule. Although we support this, if you don't pass it there will be a suspension of the rule. If it's suspended then the resources will be at risk. We oppose the deletion of the preamble to NR 1. There are people who don't believe in the public trust doctrine. The second concern is the removal of citizens from key decisions affecting the protection of fish and wildlife habitat, water quality, and scenic beauty: NR 343 1.075. We are asking you not to adopt these two changes in the permanent rule.

3.A.11. Adoption of revisions to NR 118, WI Adm. Code, pertaining to standards and criteria for the Lower St. Croix Riverway. ADDITION TO AGENDA

Russ Rasmussen, Director, Bureau of Watershed Management stated the NRB adopted revisions to ch. NR 118, Lower St. Croix Riverway at the May 2004 meeting. These proposed modifications are in response to concerns outlined in a written request from the legislature and subsequent discussions with legislative staff, Department staff and other interested parties. The Department has agreed to consider these modifications. The first legislative request is to establish a uniform level for the ordinary high water mark (OHWM). The Department recommends not changing this within the rule. The Department has committed to reevaluate the OHWM for Lake St. Croix. West Central Region (WCR) has sent a letter to the legislator outlining the process.

Mr. Ela asked how would the OHWM be established.

Mr. Rasmussen stated that we establish it for Lake St. Croix with an elevation mark.

The second request is to allow expansion of nonconforming structures within a slope preservation zone. A slope preservation zone is an area with a slope greater than 12%. The department does not believe this provision should be changed. It is important these sensitive areas are protected. In many cases there may be no practical means for erosion control if these areas are disturbed.

The third request is to measure the structure footprint and building setback to the foundation wall. We propose to allow the measurement of setbacks to the foundation wall, if that is how the local government has previously measured setbacks. Roof overhangs would be limited to three feet. For cantilevered structures or wider overhangs, the setback would be measured to the edge of these structures.

The fourth request is to define visually inconspicuous as seen from the midpoint of the river. We propose to change the definition to read visually inconspicuous as viewed from at or near the midpoint of the river.

This allows approximation of the midpoint of the river.

Mr. Welter asked why this was a concern of the Sierra Club.

Mr. Rasmussen stated because it's hard to judge what is the midpoint or near point of the river.

Mr. Ela stated that the midpoint seems arbitrary.

Mr. Behnke stated there are other circumstances where the midpoint of a river is considered. For example, when you fish on a border river. If you are one side of the midpoint you need a Michigan fishing license and the other side you need a Wisconsin fishing license. It is a generally accepted standard to where you are on the river.

Tim Andryk, DNR Attorney stated if someone is fishing between the tracks then either a Wisconsin or Minnesota license can be possessed. There are rivers where the midpoint is the point of jurisdiction, but not the Mississippi River.

Mr. Rasmussen stated there are other options you could consider such as 100 feet either side of the midpoint of the river. How do you measure that? It's a little fuzzy on purpose so if you are a foot either side of the midpoint, then you haven't made an accurate assessment. We wanted to get away from that while providing a little more definition as to where you can be on the river to be visual inconspicuous.

Mr. Welter asked how the midpoint is defined.

Mr. Rasmussen stated it's a line down the center of the river.

The fifth recommendation is to increase the size of allowable stairway landing to 40 square feet. We propose to change this provision to 40 square feet. This is consistent with current NR 115 options being considered.

The sixth recommendation is to allow one lift or stairway for each waterfront lot. We propose to change this provision to clarify that one stairway or lift is allowed for each waterfront lot

The seventh recommendation is to allow the use of windows that are not non-reflective. We propose to change this provision to allow the use of windows that are not non-reflective.

Mr. Ela stated that he spoke with Mr. Carlson who stated that the concern of the Sierra Club and the St. Croix River Association is not with ordinary window glass, but rather with super-reflective windows that are installed either for architectural reasons or for energy conservation. These create hot glare points. There are a couple structures with these types of windows on the river and they are very conspicuous. He wonders if we should change this wording that ordinary window glass is allowable and that super reflective surfaces are not.

Mr. Rasmussen stated that people expressed their concerns that ordinary window glass would not be allowed.

The eighth recommendation is to remove the provision regarding excessive noise contained in the section describing uses for home occupations and nature-oriented educational non-profit facilities. We propose to remove these provisions from the rule.

The ninth revision is to no include driveways in the 500 square foot accessory structure limit within the 75 foot setback. We propose to amend this provision so the square footage of driveways is not added to the 500 square foot limit.

The tenth request is when describing conditions for allowable foundation repair, replace the term reconstructed with "replace, improved or structurally altered" We propose to remove the word reconstruction from those portions of the rule dealing with foundation replacement, and state that foundations may be replaced, improved or structurally altered for nonconforming structure greater than 50 feet from OHWM.

The eleventh request is to allow minimal grading and filling needed as part of reconstruction or expansion. We propose to amend to the rule to allow the minimum filling and grading necessary for reconstruction or expansion in compliance with the provisions of this chapter.

The department requests the following: change the amount of time local governments are given to adopt zoning ordinances in conformance with NR 118. Clarify that the Department has the ability to request copies of any permits issued by local governments under a Lower St. Croix zoning ordinance but do not require local governments to send applications or permits to the Department.

Mr. Ela stated Mr. Carlson also had a concern about this item. If there isn't a central repository for these permit applications the partnership team has the burden of trying to figure out what's going on because they must contact with each municipality.

Mr. Rasmussen stated that decision is up to the Board. It is an additional workload for the Department and as we are cutting staff, it would be a challenge.

Mr. Willett stated the only way the Department will know what is happening is if they review it and then we are back at the situation where the Department is required to review it.

Mr. Ela stated if the Department is backing off on its role of permit review, which it is from the rules we adopted in May, it seems a legitimate request that the partnership team have an enhanced ability to perform its permit review function. He asked for a centralized location for this information to be available.

Mr. Rasmussen stated another request is to clarify that Riverway management zone boundaries cannot be changed except by a revision of NR 118. Clarify how slope preservation zones are measured to be more consistent with the cooperative management plan.

Public Participation

Joe Merchak, River Falls, representing himself stated that item #8 on Memo regarding structures and slope preservation should be treated the same in terms of reconstruction and expansion, provided they are in compliance with a mitigation plan.

He asked the Board to allow for a case by case basis for erosion control. He asked the Board to look at it and help out the property owners so they can replace their foundation if need be, rather than remove the structure.

Mr. Welter asked whom do you represent.

Mr. Merchak stated he is a homeowner and I know there is other homeowners who feel the same way.

Mr. Willett MOVED, seconded by Mr. Behnke approval of the adoption of revisions to NR 118, WI Adm. Code, pertaining to standards and criteria for the Lower St. Croix Riverway as amended.

Mr. Welter stated he is concerned about the visually inconspicuous midpoint of the river. There is a better way to define this point.

Mr. Welter MOVED, Ms. Thomas seconded to amend keep NR 118.03 (50) “visually inconspicuous” means difficult to see, or not readily noticeable, in summer months as viewed from any point of the Lower St. Croix River rather than change it to at or near the mid point.

Mr. Willett stated that this amendment will ensure this rule won’t be accepted by the legislature. The role of the Natural Resources Board is to protect the natural resources, not for visual esthetics.

Mr. Ela asked if there is a better definition or point.

Mr. Rasmussen stated it’s a difficult issue. The eye of the beholder of what is visually inconspicuous.

Mr. Behnke stated he thinks this midpoint is a general guideline and is a good guide.

Marcia Penner DNR Attorney stated the public trust doctrine does include scenic beauty. The St. Croix Riverway federal law does include scenic beauty. The zoning administrators don’t have boats and they make the decision. They are reasonable. It hasn’t been a huge issue.

Mr. Welter asked if the midpoint of the river is the most restrictive out of the choices.

Ms. Penner stated it’s more restrictive than any point on the river. She had suggested at or near the midpoint because you never know exactly where the midpoint is.

Ms. Thomas stated the Marinette case was about filling a wetland. Esthetics is a natural resources in our state. She would like to find a way to get at this issue. The legislature is willing to go along with this idea.

The vote was 2-5. The motion did not carried.

Mr. Ela MOVED, seconded by Mr. Behnke to amend NR 118.03 (50) “visually inconspicuous” means difficult to see, or not readily noticeable, in summer months as viewed from at or near the midline of the Lower St. Croix. The motion carried unanimously.

Mr. Ela MOVED, seconded by Mr. Welter to amend the definition of reflective windows that window may be made of ordinary window glass or non-reflective glass, but may not be made of glass designed to reflect more light than ordinary window glass.

Ms. Thomas stated we are trading one resource issue for another. Now we will be using more fossil fuel.

The motion passed 6-1, with Ms. Thomas voting no.

Mr. Ela asked about the permit copy issue. Does the partnership team have a sufficient structure that we could require the permit applications be sent to them?

Mr. Rasmussen stated the Department did not feel that they did. They are a quasi-governmental structure within the cooperative management agreement to provide the opportunity for a more formal process for local input.

Ms. Thomas asked if the Department was going to address the slope preservation concerns of Mr. Merchak.

Mr. Willett stated we debated this at great length in May. It was a compromise. He voted against it because it was the only way he thought it was going to pass.

Mr. Rasmussen stated he could seek a variance. It would be a local decision.

The motion passed unanimously.

3.B. Land Management, Recreation, and Fisheries/Wildlife Committee.

3.B.1. Minutes. There were no Committee minutes for June 2004 since all agenda items were taken up during the Full Board Meeting.

3.B.2. Adoption Request for authorization for public hearing on modifications to NR 10 pertaining to modifications of Deer Management Unit population goals and boundaries. MODIFICATION TO AGENDA

Bill Vander Zouwen stated that public meetings were held for 31 deer management units. These meetings were held to gauge public sentiment on deer unit goals and boundaries and discuss ramification of changes. Recommendations from the public meetings and local wildlife managers were then considered by the Department Deer Advisory Committee. The Deer Committee then made recommendations on which changes appeared prudent based on administrative code criteria and the positive and negative impacts of such changes. The Department supports taking to hearing the public recommendations to change unit goals for 10 units: DMU 3, 4, 15, 28, 29A, 59B, 61, and 74A. The Department recommends taking the following boundary changes to public hearings for 5 units: DMU 35/39, 38/39 and 75A/76.

Mr. Behnke asked the Department to consider having a public hearing in Crivitz rather than in Mountain.

Mr. Willett requested a public hearing at the Ladysmith Service Center.

Mr. Behnke MOVED, Seconded by Mr. Willett approval of request for authorization for public hearing on modifications to NR 10 pertaining to modifications of Deer Management Unit population goals and boundaries.

Mr. Oestreicher, Harshaw Chairman, Executive Council of the Conservation Congress stated the cooperation with the Department is going well overall. However we disagree with the proposed change to unit 3. The western half of the unit is over-harvested due to public land distribution. There is strong public opinion in the county.

Mr. Welter asked if there is data to support the over-harvesting.

Mr. Oestreicher stated there is data that 64% of that portion of the unit is public land. The public feels that the public land is being over-harvested. The hunters cannot get at the deer on the private land.

The motion carried unanimously.

3.B.3. Adoption of Board order WM-25-04 and WM-26-04 (E) 2004 migratory game bird seasons.

Kent Van Horn, Migratory Bird Staff Specialist, Wildlife Bureau stated this rule order establishes the season length and bag limit for the 2004 Wisconsin migratory game bird seasons. For ducks, the state is divided into two zones each with 60 –day seasons. The season begins at noon September 25 and continues for 60 consecutive days in the north, closing on November 23. In the South the season begins at noon on October 2 and continues through October 10, followed by a 5 day split, and then reopens on October 16 and continues through December 5. The daily bag limit is 6 ducks including no more than: 4 mallards, of which only one may be a hen, one black duck, one pintail (from Sept 25 (noon)-Oct 24 in the North and from Oct. 2 (noon) – Oct. 10 and Oct. 16-Nov 5 in the South), one canvasback (from Oct. 16-Nov14 statewide), 2 wood ducks, 2 redheads, and 3 scaup.

For Canada geese, the state is apportioned into 3 goose hunting zones: Horicon, Collins and Exterior. Other special goose management sub-zones within the Exterior Zone include Brown County, Burnett County, Rock Prairie and the Mississippi River. Season lengths are: Collins Zone – 65 days, Horicon Zone - 91

days, Exterior Zone – 95 Days and Mississippi River sub-zone 70 days. The Burnett County subzone is closed to Canada goose hunting. The Statewide daily bag limit for Canada geese in the Horicon and Collins Zones is 2 birds per day during the open seasons within each zone. In the exterior zone its subzone the daily bag limit will be 1 bird per day until Oct 31 and from Nov 1 to the end of the season in each zone or sub-zone the daily bag limit will be 2 birds per day.

Mr. Welter asked about the drop in pintail population.

Mr. Van Horn stated the difficulty is that the only species that we have enough data on is mallards. We are setting the seasons on one species data that affect all the other species.

Mr. Ela asked about the logic of the U.S. Fish and Wildlife Service (USFWS) not looking at individual species populations.

Mr. Van Horn stated it depends on available data and funds to survey the birds.

Tom Hauge, Director, Bureau of Wildlife Management stated species research is a national issue. There may be a season within a season regulation for certain species of ducks become more common.

Mr. Welter asked about woodcock populations.

Mr. Van Horn stated we are not proposing a change in the woodcock season.

Public Appearances

Dick Koerner, Conservation Congress, Neenah, Chairman of the Waterfowl Committee stated Conservation Congress supports the north zone regulations, but oppose the south unit split. According to the spring hearing questionnaire, there was 82% supporting the duck season in the southern zone straight through with no split in those years when we have a 60 day season.

Mr. Oestreicher stated people in the southern zone are opposed to the split. He broke down which counties supported the split and which opposed the split. Counties in the Northwest part of the state are in the southern duck zone and the migrations only come through there 20-30 days out of 60 days.

Cal Barstow, Stoddard, Wisconsin Wildlife Federation Waterfowl Study Committee stated an earlier season is necessary because the birds are passing through in mid-September. He suggested opening the goose season on Mississippi River earlier to coincide with duck season.

John Wetzel, Holmen, Lacrosse County Conservation Alliance stated they agree with the southern zone season. We agree with the proposed southern zone duck season. It's important to extend that season into early December. We endorse the noon opener, but we would like to see a two hen bag limit on mallards after November 1st. We recommend that the Mississippi River be closed during the early T-Zone deer hunt in October. We do not recommend an early goose season opening the Labor Day weekend for the Mississippi River. We have campers, picnickers, boaters, anglers. We don't think it's a good idea to mix this with goose hunting.

Tony Tove, Boscobel, representing himself stated he disagrees with the regular goose season on Sept. 18th for several reasons. He would like to see it concurrent with the duck season.

Tom Scholl, Milwaukee, representing himself stated his concern is with the season dates. We get froze out around Thanksgiving. He recommends to either open up on October 2nd with no split or September 25 with a split in early October.

Mr. Behnke MOVED, seconded by Mr. Willett approval of adoption of Board order WM-25-04 and WM-26-04 (E) 2004 migratory game bird seasons.

Mr. Willett stated he would like to consider that the south split in early October.

Mr. Oestreicher stated 3-1 in favor of running the southern zone with no split. The diver hunters do not want the late season. It's the corn field mallard hunters who want the late season.

Mr. Willett MOVED to amend to provide for no split in the south zone. No second.

The original motion passed unanimously.

- 3.B.4. Adoption of revisions to WI Admin Code – Housekeeping, and minor non-controversial changes to NR 20, NR 21, NR 23, and NR 26 pertaining to fishing regulation changes.

Steve Hewett, Section Chief, Fisheries Policy and Operations, Fisheries Management and Habitat Protection Bureau stated the Department is seeking adoption of FH-04-04, housekeeping and minor, non-controversial changes to sport fishing regulations on inland waters of Wisconsin. Law Enforcement and Fish Habitat staff suggested these changes after a review of Chapters NR 20, 21, 22, 23, and 26 in order to make minor corrections and simplify existing rules where possible. We recommend 14 minor, non-controversial changes and corrections, detailed in the attachments.

Mr. Behnke MOVED, seconded by Mr. Ela approval of adoption of revisions to WI Admin Code – Housekeeping, and minor non-controversial changes to NR 20, NR 21, NR 23, and NR 26 pertaining to fishing regulation changes. The motion passed unanimously.

- 3.B.5. Adoption of Board Order FR-29-04 revisions to NR 46 dealing with the Forest Tax Program.

Carol Nielsen, Tax Law Manager, Bureau of Forest Management stated This is a routine annual requirement to determine stumpage values used in calculating severance and yield taxes on timber cuts from Forest Croplands (FCL) and Managed Forest Lands (MFL). Public hearings were held in June in three locations. A total of three people attended these hearings. Their comments and those sent in writing were reviewed and incorporated in the final prices.

Mr. Behnke MOVED, seconded by Mr. Poulson approval of adoption of Board Order FR-29-04 revisions to NR 46 dealing with the Forest Tax Program. The motion passed unanimously.

- 3.B.6. Request for authorization for public hearing on revisions to NR 45, NR 1.30, and NR 51 and creation of NR 1.29 pertaining to use of Department properties.

Peter Biermeier, Trails and External Relations Section Chief, Park and Recreation Bureau stated fee increases are being proposed in the form of a market rate adjustment for eight of the most popular state park managed properties, and fee increases are also being proposed for shelter use and electrified group campsites. There are some concerns expressed by some campers and other affected property users as no one appreciates having to pay additional fees. However, the Department believes these modest increases are necessary to continue to provide quality services to the user and are not excessive when compared to similar facilities elsewhere. The maximum lengths of camping stays are being proposed for being shortened to give more users an opportunity to camp on park and forestlands. This may be of concern to those individuals that tend to stay in the campgrounds the maximum length of time but will likely have equal support by those who have been unsuccessful in getting into the more popular campgrounds. Paintball use on state natural areas would no longer be permitted.

Mr. Behnke MOVED, seconded by Mr. Ela approval of request for authorization for public hearing on revisions to NR 45, NR 1.30, and NR 51 and creation of NR 1.29 pertaining to use of Department properties.

Ms. Thomas asked if the Department did a study to determine if reducing maximum stay to 14 days would reduce revenue.

Dave Benish, Park and Recreation Specialist, Bureau of Parks and Recreation stated that the 21-day issue is a problem. More and more of our customers are finding a way to take advantage over other customers in making reservations.

The motion passed unanimously.

- 3.B.7. Lower Wisconsin State Riverway, Turtle Flambeau Flowage, and State Wildlife Habitat, Land Acquisition, Various Counties.

Mr. Ela MOVED, seconded by Mr. Welter approval of Lower Wisconsin State Riverway, Turtle Flambeau Flowage, and State Wildlife Habitat, Land Acquisition, Various Counties.

Mr. Willett asked what happens if we don't buy this.

Richard Steffes, Real Estate Director stated the Board of Commissioners mission is not to hold land that is not productive. They could sell this to the general public.

Mr. O'Brien asked what the Board of Commissioners will use the money for.

Mr. Steffes stated school libraries.

The motion passed unanimously.

3.B.8. Statewide Natural Area, Land Acquisition, Dunn County.

Mr. Welter MOVED, seconded by Mr. Behnke approval of Statewide Natural Area, Land Acquisition, Dunn County. The motion passed unanimously.

3.B.9. Harrington Beach State Park, Land Acquisition, Ozaukee County.

Mr. Behnke MOVED, seconded by Mr. Willett approval of Harrington Beach State Park, Land Acquisition, Ozaukee County. The motion passed unanimously.

3.B.10. Big Roche-A-Cri Fishery Area Land Acquisition, Adams County.

Ms. Thomas MOVED, seconded by Mr. Willett approval of Big Roche-A-Cri Fishery Area Land Acquisition, Adams County. The motion passed unanimously.

3.B.11 Statewide Fishery Remnant Areas, Land Exchange, Grant and Iowa Counties.

Mr. Welter MOVED, seconded by Mr. Willett approval of Statewide Fishery Remnant Areas, Land Exchange, Grant and Iowa Counties. The motion passed unanimously.

4. Committee of the Whole

4.A. Citizen Participation (1:00 p.m.)

William Howe, Prairie du Chien, representing himself discussed Mississippi River issues. He would like to have the science center expanded to conduct research regarding the Mississippi River. He proposed that this would be a central storage facility for research done across the country. The money will come from tax dollars.

Marc Schultz, Onalaska, Secretary, Lacrosse County Conservation Alliance discussed Mississippi River issues. The Environmental Management Program is the key to protecting the river. We are concerned the direction Wisconsin is taking to protect the public waters and changes in regulations. Water quality on the Mississippi River has improved over the past 40 years. The river recreation is a multi billion dollar industry. Please support the full funding of the EMP.

Mr. Ela asked for clarification about the current EMA appropriation?

Mr. Schultz stated that if current 2005 appropriation isn't increased U.S. Geological Survey will have staff and effort problems on the river.

Cal Barstow, Stoddard, Wisconsin Wildlife Foundation discussed the future of Wisconsin Waterfowl Hunting. He asked the Board to 1. Review the severe Wisconsin decline in duck hunters, harvest, and hunting trips, 2. Implement a statewide waterfowl hunter questionnaire to provide a sound base of information on hunter attitude and activities and 3. Use the questionnaire results along with other information to develop a master plan to arrest the negative trends and improve waterfowl hunting opportunities in Wisconsin. Wisconsin has lost 50% of their duck hunters. The duck harvest is down 60%. Duck hunters are a key element of wetland preservation.

Mr. Ela asked if this trend is unique to Wisconsin.

Mr. Barstow stated it's a nationwide phenomenon, but it's worse in Wisconsin. Michigan and Minnesota are not down as much. The decline is worse in Canada.

Mr. Willett asked if he knows the reasons for the decline.

Mr. Barstow stated he tries to stay out of that aspect because there are excellent, professional organizations that are being paid daily to make those evaluations.

Mr. Behnke asked about the specifics of the questionnaire.

Mr. Barstow stated he thinks the DNR or the University should conduct the questionnaire. Ducks Unlimited is willing to assist with the funding. Minnesota has done a similar study. The cost would be around \$30,000.

Ms. Thomas requested that the Department research what similar studies have been done nationally.

Ray Heidel, Onalaska, representing himself discussed waterfowl zones. He requested that the NRB support and/or initiate any movement necessary to allow Wisconsin to have three waterfowl zones with the option of splits in each zone, the Mississippi River Sub-Zone being designated as the third zone. He also requested that the NRB support and/or initiate any movement necessary to offer reduced youth small game hunting license, at the current reduced rate, to youth from other states that offer this reciprocity to youth from other states. Finally he requested that the NRB support and/or initiate any movement necessary to allow the use of artificial light at the point of kill while hunting coyotes in Wisconsin after 10:00 p.m.

Mr. Willett supports the youth reciprocity licenses and would like to know how we can get that done.

Dan Flaherty, Lacrosse, representing himself discussed water shortage problems in the state and the possible pressure from other areas of the country to transport fresh water. He discussed some of the changes that have occurred since he served on the Board 25 years ago. The trout stamp has been a key to habitat improvement. He suggested an increase cost for the trout stamp. He requested that the Board audit the money to ensure it is going where it should go.

George Meyer, Madison Wisconsin Wildlife Federation stated the next 6 weeks are critical for the Board because you approve the biannual budget of the DNR. He asked the Board to look at the following programs: 1. non-point program. Under current regulations, it will be 30 years before the water regulations will be met. Put more funding in the budget for this program. 2. Fish and wildlife account. Fee increases are necessary to keep staff and programs and law enforcement. 3. Overall staffing levels in Department. Current levels are 2800 employees. If there is another 10% reduction that would be the lowest staffing since the early 1980s.

Mr. Willett asked Mr. Meyer to give us advice about how to keep staff.

Mr. Meyer stated there are many accounts that are not general-purpose revenue. There are hunters and anglers that are asking to pay more. Many others are user fees such as companies that discharge pollutants. There should be a continual increase in those fees to fund the staffing.

Mr. Ela asked about the timetable of the budget briefings.

Mr. O'Brien stated the staff will be briefing us on the budget before the October meeting.

4.B. Retirement Resolutions.

4.B.1. Carol A. Tiegs.

4.B.2. Dewayne W. Mashin.

4.B.3. Gene E. Park.

4.B.4. Ruth Ann Raftery.

4.B.5. Sylvia B. Rosenbaum.

4.B.6. Lawrence J. Weix.

4.B.7. Shirley W. Henschel.

4.B.8. Lawrence R. Waskow. **ADDITION TO AGENDA**

Mr. Willett MOVED, seconded by Mr. Behnke approval of the retirement resolution. The motion passed unanimously.

5. Board Member Matters.

5.A. Approval of 2005 Meeting Schedule.

Mr. O'Brien stated that Mr. Hauge asked to change the proposed August meeting to August 16-17, one week later to provide more time for the Migratory Bird regulations.

Mr. Ela MOVED, seconded by Mr. Behnke approval of the 2005 Meeting Schedule as amended.

Mr. Ela stated that a few months ago we approved a land purchase at Crex Meadows. He would like the staff report back with a detailed feasibility of joining the borders of Crex Meadows and Governor Knowles State Forest.

He is concerned about the complexity of the new source review rule. He would like the staff to develop a special briefing session for the Board to get together with stakeholders and staff to discuss concerns.

Mr. Poulson agrees with Mr. Ela. He is concerned about where the Board needs to be with new source review.

Mr. Willett stated a meeting in Stevens Point before it comes before the Board is a good idea.

Mr. Welter is concerned about the devastating fish kills in SW Wisconsin. He would like to be kept abreast of the enforcement actions.

He also told the Board about a couple of conferences – American Fisheries Society in Madison on 22-24th August. The second is the Citizen Monitoring conference 20-21th August in Madison

Mr. Willett is concerned about urban programs for youth. He would like the Department to start the process to find someone on the Joint Finance Committee to support that program. He stated that 60% of the state's population live in urban areas.

Mr. Poulson is concerned about the prairie chickens. There is an opportunity to have a joint effort with DATCP and DNR. There are 100,000 acres of farmland needs to be protected and the prairie chicken needs about 15,000 acres.

Mr. O'Brien thanked the WCR staff for hosting the August meeting.

6. Special Committees' Report

6.A. INFORMATION ITEM - Open Meetings Law

Richard Prosis, Director, Bureau of Legal Services stated the Natural Resources Board requested a briefing on the open meeting law and its application to the Board's Meeting Agenda. The briefing included guidance from past Attorney General Opinions and past Attorney General Compliance Guides on Wisconsin's Open Meetings Law.

6.B. INFORMATION ITEM - Agenda and Manual Code Revision Committee Report

Mr. Welter stated he Natural Resources Board appointed a subcommittee to discuss and propose revisions to the Board's Meeting Agenda and Manual Code 1103.1, entitled "The Organization and Operation of the Natural Resources Board". A special meeting of the subcommittee was held via telephone conference call on Wednesday, July 7, 2004. Pursuant to Paragraph IX of Manual Code 1103.1, entitled "Revision", no changes to the manual code provisions may be made unless such action is presented at a regular meeting of the Board and approved by a majority of the members at the next regular meeting of the Board. In summary, the proposed revisions to the third paragraph of the Board Meeting Agenda clarifies that notice of agenda items will be given in no case less than 2 hours in advance. Other revisions to the Meeting Agenda, which require corresponding revisions to Manual Code 1103.1, clarify the Order of Business and substantive issues for the Board meetings.

Mr. Behnke stated he would like to strike the last line of III. A. "The vice-chairperson and secretary may serve no more than one one-year term."

Mr. Welter stated it was discussed at the meeting to limit the number of terms the Board Chairperson serves, but not the vice-chair or secretary.

Mr. O'Brien stated Board Members should not serve on a committee that will eventually be before this Board. The Board member cannot vote at the Board meeting where that item goes before the Board. Paragraph VII. C. add the following language regarding conflict of interests. "Board members shall not serve on committees (other than Board committees) or other groups responsible for formulating proposed rules or rule changes or any other matter which will require Board action. This policy is not intended to prevent Board members from attending meetings or gatherings of such groups for the purpose of obtaining information about the proposed rule or rule change or matters requiring Board action." Mr. O'Brien will redo language.

7. Department Secretary's Matters

7.A. DONATION – Friends of High Cliff State Park will donate \$12,000 for the purpose of hiring an educator for High Cliff State Park.

Mr. Behnke MOVED, seconded by Ms. Thomas approval of DONATION – Friends of High Cliff State Park donated \$12,000 for the purpose of hiring an educator for High Cliff State Park. The motion passed unanimously.

7.B. DONATION – Lake Koshkonong Recreation Association will donate \$12,000 to be used towards the operation of the Bark River Hatchery for Lake Koshkonong and other fishery enhancement projects.

Mr. Behnke MOVED, seconded by Ms. Thomas approval of DONATION – Lake Koshkonong Recreation Association will donate \$12,000 to be used towards the operation of the Bark River Hatchery for Lake Koshkonong and other fishery enhancement projects. The motion passed unanimously.

- 7.C. DONATION - Pete And Lucy Leach Fund will donate \$11,100 to be used to support a limited term wildlife technician position at the Leach Natural Resources Centers in Waushara County.

Mr. Behnke MOVED, seconded by Ms. Thomas approval of DONATION - Pete And Lucy Leach Fund will donate \$11,100 to be used to support a limited term wildlife technician position at the Leach Natural Resources Centers in Waushara County. The motion passed unanimously.

- 7.D. DONATION – Whitetails Unlimited – Rhinelander Chapter will donate \$5,900 to be used to purchase decoys used to fight illegal road-hunting in Oneida County and to maintain forest openings on Northern Highland/American Legion State Forest.

Mr. Behnke MOVED, seconded by Ms. Thomas approval of DONATION – Whitetails Unlimited – Rhinelander Chapter will donate \$5,900 to be used to purchase decoys used to fight illegal road-hunting in Oneida County and to maintain forest openings on Northern Highland/American Legion State Forest. The motion passed unanimously.

- 7.E. DONATION – Wisconsin Trappers Association will donate \$5,000 to be used to conduct critically needed otter aerial surveys across all three otter management zones in Wisconsin.

Laurie Osterndorf, Administrator, Division of Land presented a recognition award to John Irving, president of the Wisconsin Trappers Association. The DNR recognized him for his dedication, service, and contribution to the citizens of Wisconsin.

Mr. Willett MOVED, seconded by Mr. Poulson approval of DONATION – Wisconsin Trappers Association will donate \$5,000 to be used to conduct critically needed otter aerial surveys across all three otter management zones in Wisconsin. The motion passed unanimously.

- 7.F. DONATION – Salmon Unlimited Wisconsin, Inc. will donate \$12,000 to be used to support the Root River Steelhead Facility in Racine

Mr. Behnke MOVED, seconded by Ms. Thomas approval of DONATION – Whitetails Unlimited – Rhinelander Chapter will donate \$5,900 to be used to purchase decoys used to fight illegal road-hunting in Oneida County and to maintain forest openings on Northern Highland/American Legion State Forest. The motion passed unanimously.

The meeting adjourned at 4:43 p.m.